Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Petition for Rulemaking	)	
to Establish Standards of Conduct	)	
for Telecommunications Providers	)	RM-10613
and	)	
Request to Initiate Section 403 Proceeding	)	
Into Activities of WorldCom, Inc. and	)	
Other Commission Licensees	)	

WorldCom, Inc.'s Reply Comments to Petition for Rulemaking and Request for Initiation of § 403 Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees

Richard S. Whitt
WORLDCOM, INC.
1133 19th Street, NW
Washington, DC 20036
(202) 887-3845

Mark D. Schneider
Marc A. Goldman
Nicole G. Berner
Amy L. Tenney
JENNER & BLOCK, LLC
601 Thirteenth St., NW
Washington, DC 20005
(202) 639-6005
(202) 639-6066 (fax)

February 19, 2003

Executive Summary

In brazen requests that underscore why this Commission has largely deregulated licensing of common carriers, Verizon and SBC support the United Church of Christ's ("UCC") request that the Commission undertake a § 403 investigation of WorldCom. But rather than endorsing UCC's request that the Commission use the results of such an investigation to design forward-looking rules, they instead argue that the Commission should strip WorldCom of its licenses. They thereby seek to eliminate one of their chief competitors and to help reestablish a monopoly over local and long distance markets. Indeed, SBC even suggests that consumers will be protected because WorldCom's assets will be purchased – by the BOCs themselves.

The purpose of the Verizon/SBC comments is readily apparent from their range: they quickly move from the accounting issues that were the focus of the UCC petition to complaints about the ostensibly unfair competition provided by WorldCom via the unbundled network element platform (UNE-P) and the possible emergence of a debt-free competitor from bankruptcy. These are policy issues that have nothing to do with WorldCom's alleged misconduct, and everything to do with the BOCs' desire to kill competition.

The deeply cynical nature of the Verizon and SBC filings is highlighted by the fact that at the same time they filed comments nominally supporting UCC's call for FCC accounting reforms and investigations, in a different docket they have filed comments at the FCC *opposing* more rigorous accounting rules, and *opposing* more rigorous common carrier requirements. As companies that have been the subject of repeated substantial fines by the FCC and state commissions for misstatements and unlawful conduct, it is not surprising that when it comes to their own conduct they oppose any heightened scrutiny by regulators. Indeed, in filing these very submissions excoriating WorldCom for violating the law, the BOCs themselves violate both the automatic stay provisions of the Bankruptcy Code and Commission rules that forbid responses like these that seek relief not sought in the petition itself. In truth what the BOCs want here has nothing to do with issues raised by the UCC regarding the proper scope of the FCC's investigatory powers and the FCC's character requirements. They simply want to shut down WorldCom, because it is not in their shareholders' interests to face competitors in the telecommunications market.

On that point, the securities laws, the bankruptcy laws, and the Communications Act all to a greater or lesser extent are based on the premise that it is the market itself, and not regulators, that should determine which companies add value and should survive, and which do not and should not. And the 1996 Act made it national policy to promote competition, not to eliminate it. The plea of two Bell companies that the Commission should implement *their* judgment that the telecommunications market would be better without one of their principal competitors is powerfully at odds with that background law. The Commission should see these pleadings for what they are and reject their claims.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Petition for Rulemaking	)	
to Establish Standards of Conduct	)	
for Telecommunications Providers	)	RM-10613
and	)	
Request to Initiate Section 403 Proceeding	)	
Into Activities of WorldCom, Inc. and	)	
Other Commission Licensees	)	

WorldCom, Inc.'s Reply Comments to Petition for Rulemaking and Request for Initiation of § 403 Proceeding Into Character of WorldCom, Inc. and Other Commission Licensees

I. Introduction

Most of the responses to the UCC filing merely reiterate claims made in UCC's original petition. They call for further investigation of WorldCom, and more stringent FCC rules concerning carrier conduct, without explaining in any meaningful way what benefit would result from an additional investigation, or why the FCC's existing rules (which most commenters do not even discuss) are inadequate to the task. WorldCom fully answered these arguments in its initial comments, and no further response is necessary or appropriate here.

The nation's two largest telephone providers – SBC and Verizon – have filed very different responses. Their filings ostensibly supporting the UCC actually oppose the relief requested in the UCC petition – more rigorous "fitness" and accounting rules for common carriers. Indeed, their comments on this petition for rulemaking make no mention of rulemaking at all. Instead, in direct violation of FCC pleading rules, these two monopolists seek relief not sought by the UCC in the petition they "support," and ask the FCC to strip WorldCom of the licenses it needs to provide service.[1] And their request that the FCC institute action that would destroy much of the value of the estate in bankruptcy also plainly violates the automatic stay provisions of the United States Bankruptcy Code.[2] In this lawless manner these carriers demand the FCC remove one of their principal competitors – on the ground that it acted in a lawless manner. The Commission should not tolerate this cynical abuse of its rulemaking process.

It is easy to see why SBC and Verizon seek an investigation. They would attempt to use it to force WorldCom again to respond to requests for massive amounts of information, hoping to reduce the chance that WorldCom can emerge from bankruptcy as a vibrant competitor and to drive one of their chief competitors out of business. Indeed, this purpose is apparent from the breadth of their arguments. Verizon argues it is unfair to allow WorldCom to continue to compete using UNE-P. And both BOCs argue that it is unfair to allow WorldCom to emerge from bankruptcy debt-free. Those arguments have nothing to do with WorldCom's financial misstatements, and nothing to do with rules regarding fitness. They have everything to do with

---

[1] The original UCC petition for rulemaking accompanied an informal objection seeking related relief, asking the FCC to oppose in the bankruptcy court the transfer of WorldCom's licenses to the debtor-in-possession. But by the time the FCC put the petition out for notice, that transfer had already taken place, the informal objection had become moot, and the only pleading at issue was the petition for rulemaking requesting an investigation of WorldCom's conduct to develop a record to consider prospective changes to the Commission's "fitness" rules.

[2] The automatic stay provision of the bankruptcy code precludes entities from commencing or continuing judicial or administrative actions against the debtor that could have been commenced before the bankruptcy. *See* 11 U.S.C. § 362(a). SBC well understands that its request violates this provision. When it filed its Comments here, it simultaneously filed a petition with the bankruptcy court seeking an exemption from the automatic stay, and the bankruptcy court has scheduled a hearing on SBC's motion for next week. But SBC's willingness to file comments with the Commission before the bankruptcy court rules on its motion, and Verizon's failure even to ask for leave to file comments, demonstrate their willingness to flout the law in an effort to kill competition.

the BOCs' desire to kill competition. SBC's claim that consumers can be protected by the sale of WorldCom's assets – to the BOCs – is transparent.[3]

WorldCom acknowledges that the conduct of its prior management caused substantial harm to its employees and stockholders, and to the public at large. But WorldCom itself found and revealed those irregularities, launched its own internal investigation, and made major changes to ensure that mistakes of the past were not repeated. And the accounting irregularities the UCC asks the FCC to investigate are financial in nature. They involve conduct at the core of the Securities and Exchange Commission's and Department of Justice's expertise, not that of this Commission. They in no way involved the quality of service provided to WorldCom's customers. The SEC,[4] the DOJ,[5] the bankruptcy court,[6] the Office of the Attorney General of the

---

[3] SBC Comments at 4-5. Unless otherwise indicated, all cited comments were filed in this proceeding.

[4] WorldCom has cooperated fully with the inquiries and investigations of all enforcement agencies, including the SEC. The SEC's investigation covers possible violations of the federal securities laws and regulations, including 15 U.S.C. §§ 77q(a), 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 17 C.F.R. §§ 240.13a-1, 240.13a-13, 240.12b-20, 240.10b-5. The SEC's Division of Enforcement issued a subpoena to WorldCom on March 29, 2002, seeking extensive categories of documents and information concerning numerous facets of WorldCom's business, including accounts receivable, reserves, customer contracts, billing, accounting for goodwill, corporate structure, loans to officers and directors, corporate review of analysts' estimates, and corporate governance practices. Following WorldCom's voluntary disclosure of certain accounting irregularities relating to the capitalization of "line costs," on June 26, 2002, the SEC filed a civil action against WorldCom seeking monetary penalties and injunctive relief, and also issued a second subpoena seeking additional corporate records relating to this disclosure and to any anticipated restatement of WorldCom's financial statements. Rather than litigate the SEC's motion for injunctive relief, on November 26, 2002, WorldCom consented to an order that provided, among other things, for the appointment of a corporate monitor – to be paid by WorldCom – having broad oversight responsibility with respect to WorldCom's assets and all compensation paid by WorldCom.

[5] Also following upon WorldCom's voluntary disclosure of the accounting irregularities relating to the capitalization of "line costs," the U.S. Attorney's Office for the Southern District of New York issued a Grand Jury Subpoena to WorldCom. The subpoena sought extensive corporate information and records relating to the events surrounding, and all individuals involved in, the accounting irregularities, as part of the U.S. Attorney's investigation into alleged violations of 18

(Cont'd . . .)

State of New York,[7] and WorldCom itself[8] have already investigated or are currently investigating WorldCom. Verizon and SBC are unable to suggest any reason to believe that an additional FCC investigation would result in new information that ongoing investigations will not already uncover.

Indeed, while they are eager to have the FCC reach well beyond its core regulatory functions to punish WorldCom for its prior management's accounting fraud, in all other situations SBC and Verizon take the position that the Commission should limit its oversight to its core regulatory functions. They have been key participants in proceedings over the years in which the Commission adopted their views and has moved away from a policy of regulating

---

(. . . cont'd)

U.S.C. § 371. To date, the U.S. Attorney's investigation has resulted in the indictment and/or the guilty pleas of a number of former WorldCom employees for conspiracy to commit securities fraud, securities fraud, and causing false filings with the SEC.

[6] WorldCom, Inc. and substantially all of its direct and indirect U.S. subsidiaries filed voluntary petitions seeking relief under Chapter 11 of the United States Bankruptcy Code. The U.S. Bankruptcy Court granted the U.S. Trustee's motion for the appointment of an Examiner and ordered that the Examiner "shall investigate any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of [WorldCom] by current or former management, including but not limited to issues of accounting irregularities." The Examiner, Dick Thornburgh, former United States Attorney General and currently Counsel with Kirkpatrick & Lockhart LLP, issued a 118-page report that covered in detail issues including WorldCom's acquisitions and other significant transactions, personal enrichment on the part of certain executives, WorldCom's relationships with Salomon Smith Barney and analyst Jack Grubman, and WorldCom's accounting and financial reporting. Verizon relies heavily on this Report in its Comments in this proceeding. A more conclusive and comprehensive report is currently being prepared.

[7] The Office of the Attorney General of the State of New York has served three subpoenas on WorldCom in connection with its investigation of various WorldCom activities. The subpoenas seek various corporate records concerning compensation paid to certain executives and dealings with certain investment banking firms.

[8] The Audit Committee of WorldCom's Board of Directors retained William McLucas, former Chief of the Enforcement Division of the SEC and a partner in the law firm of Wilmer, Cutler & Pickering, to conduct an independent investigation of WorldCom's accounting irregularities and related matters. Mr. McLucas and his firm ultimately became counsel to the Special Investigative Committee of WorldCom's Board of Directors. This investigation is ongoing.

common carriers through licensing decisions.[9] In those proceedings, the Commission has granted blanket authority for common carriers to provide service except in cases of transfer of corporate control.[10] It has also limited accounting regulations to dominant carriers and has reduced even those regulations. It has done so because regulation "may stifle new and innovative services," and because the marketplace will best "ensure reasonable behavior by carriers."[11] It has left in place only those accounting requirements needed to fulfill its regulatory responsibilities, while leaving financial regulation to other agencies.

In fact, almost at the same time they filed their Comments here, Verizon and SBC submitted comments asking for further streamlining of accounting regulations on the basis that the Commission should retain accounting requirements only to the extent necessary to fulfill its regulatory mission,[12] and that "[c]ompetition in the local exchange and exchange access markets make the existing accounting and ARMIS reporting rules no longer necessary in the public interest."[13] Verizon and SBC further stressed that recent accounting scandals do not result in the need for more regulation *by the FCC* because other agencies are better suited for this task. Verizon explained that:

---

[9] *See generally* Comments of Southwestern Bell Telephone Co., CC Docket No. 97-11 (filed Feb. 24, 1997) (advocating for the elimination of § 214 requirements); Joint Comments of Bell Atlantic and NYNEX, CC Docket No. 97-11 (filed Feb. 24, 1997) (same); Comments of United States Telephone Ass'n, CC Docket No. 97-11 (filed Feb. 24, 1997) (same); Initial Comments of Ameritech, CC Docket No. 97-11 (filed Feb. 24, 1997) (same).

[10] *See* WorldCom Comments at 5 (describing Commission's actions).

[11] *In re Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, CC Docket No. 97-11, 14 F.C.C.R. 11364, ¶ 13 (1999).

[12] Comments of SBC Communications Inc., WC Docket No. 02-269, at 4 (filed Jan. 31, 2003) ("SBC Accounting Comments") (explaining that accounting requirements no longer needed for rate-of-return regulation should be eliminated); Comments of Verizon, WC Docket No. 02-269, at 7 (filed Jan. 31, 2003) ("Verizon Accounting Comments") (rules no longer have value even for regulation).

[13] SBC Accounting Comments at 5.

> [T]he financial difficulties and accounting irregularities presented by Enron, WorldCom and Global Crossing, while they are of serious public concern, simply do not implicate the *regulatory* accounting and ARMIS reporting requirements being reviewed by the Joint Conference. The problems highlighted by these companies are not something unique to the telecommunications industry - much less, to a handful of specific Class A carriers - and cannot be used to justify retaining or adding FCC regulations. Any concerns about accounting irregularities can be (and are being) addressed by the Securities and Exchange Commission, so that they can be applied to *all* publicly reported companies, not just telecommunications carriers, and there is no reason for the Joint Conference or the Commission to duplicate those efforts . . . . [O]nly the broad-based requirements of the Securities and Exchange Commission, which include non-regulated and non-telecommunications activities, could possibly provide the early warning needed to prevent future similar irregularities.[14]

Similarly, SBC contends that other agencies have the responsibility and expertise to investigate the accounting scandals:

> These incidents in no way tie to the Commission's regulatory accounting rules. As such, the Commission should rely on the extensive investigation and resolutions being addressed by Congress, the Securities and Exchange Commission ("SEC"), the Financial and Accounting Standards Board ("FASB"), the American Institute of Certified Public Accountants ("AICPA") and other capable regulatory and legislative bodies.
>
> There is no need for additional regulation in the telecommunications regulatory accounting arena. . . .[15]

Finally, the BOCs' trade group, the United States Telecommunications Association, agreed, explaining that "[p]otential and actual market failures should be monitored and detected through

[14] Verizon Accounting Comments at 8-9.

[15] SBC Accounting Comments at 2.

financial reporting to and analysis by the government agency – namely the Securities and Exchange Commission (SEC) – that is tasked with that responsibility."[16]

WorldCom agrees. The SEC, the DOJ and related agencies referenced in these BOC pleadings are well equipped to police public companies' adherence to securities and criminal laws. And the overriding principle that animates these laws is that enforcement of those laws allows the market, and not regulators or paid consultants, to decide which companies deserve to stay in business and which do not. Unlike SBC and Verizon, WorldCom has fought in the market for every single one of its customers, and it intends to continue to fight to keep its existing customers and win over new ones.

SBC and Verizon have a different idea. Verizon submits an article by one of its retained consultants, Robert Crandall, expressing the view that the public would be better served if the FCC shut down WorldCom, and allowed its customers and its network to be distributed to more worthy carriers – including, no doubt, Verizon. Verizon urges the FCC to implement Mr. Crandall's understanding of the public welfare and eliminate WorldCom from the market by administrative fiat. In the name of the public interest, the BOCs ask for Commission action that would serve no interest but their own. In doing so, they exemplify the damage that would be caused by adjudicating charges and counter-charges by common carriers concerning the "character" of their competitors. For the reasons set out below, the Commission should reject these cynical submissions.[17]

---

[16] United States Telecom Ass'n Comments, WC Docket No. 02-269, at 10 (filed Jan. 31, 2003). In the proceedings on accounting issues, WorldCom explained that many accounting rules for dominant carriers were needed to fulfill the Commission's core regulatory functions but did not argue that the Commission should maintain rules unnecessary for those functions.

[17] If Verizon's and SBC's contrary view were to prevail, regulators ought to promptly broaden their inquiry to include both SBC and Verizon. After all, SBC has been fined more than one

(Cont'd . . .)

II. **WorldCom's Prior Misconduct Did Not Primarily Relate to its Telecommunications Duties**

In making both initial licensing decisions and revocation decisions, the Commission has focused its attention on policies uniquely necessary to the regulation of the telecommunications industry – the need to promote local competition given the BOCs' bottleneck control over local lines, the need for universal service, and the need to allocate scarce spectrum. But WorldCom's accounting failures did not relate to any of these areas.

The BOCs attempt to spin a story blaming WorldCom's conduct for dire consequences in the telecommunications markets, and pointing to misstatements to the Commission, but the two strands of the story are unrelated. Any WorldCom misstatements in Commission filings came in

(. . . cont'd)

billion dollars since 1996. It has been fined for deceptive marketing practices, for repeated failure to meet merger conditions, and for violation of an Enforcement Bureau Order directing the company to provide sworn verification of the truth and accuracy of its answers to a letter of inquiry. Moreover, as WorldCom noted in its Comments, SBC has been fined for deceiving the Commission in the course of a section 271 application. And unlike WorldCom's accounting misstatements, SBC's misrepresentations were directly relevant to a pending FCC decision, and they were not being investigated by any other governmental agency.

Verizon, too, has violated the Telecommunications Act with disturbing regularity, paying fines of more than three hundred million dollars since 1996, including fines for deceptive lobbying practices, payments to end an investigation of merger-condition violations, and payments for collocation violations. Indeed, just this month Verizon was ordered to show cause why it should not be required to pay outstanding fines in excess of $9 million for failure to file accurate performance reports with the New Jersey Board of Public Utilities. *See In re Investigation Regarding Local Exchange Competition for Telecommunications Services*, Docket No. TX95120631 (N.J. Bd. Pub. Utils. Feb. 5, 2003). Like the misrepresentations SBC made to the Commission, those reports concerned core telecommunications functions. If licenses of common carriers should be stripped based on a character evaluation, SBC and Verizon are prime candidates for such license-stripping.

Indeed, just last week, a complaint was filed against Verizon at the SEC relying on FCC staff audits showing that Verizon has failed to account for $ 5 billion in "phantom" assets on its books. Unlike the fraud uncovered by WorldCom, such inflated books of accounts could well have led directly to higher wholesale and retail telephone rates. *See Consumer Group Asks SEC to Investigate Verizon's Accounting*, S.F. Chron., Feb. 12, 2003 (available at http://www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2003/02/12/financial 1947EST0337.DTL).

attached SEC and related financial disclosures. And while Verizon and SBC allege that WorldCom misrepresented matters in numerous FCC proceedings, it is those allegations that are falsehoods. Neither WorldCom's primary financial misconduct nor its secondary statements to the Commission warrant an FCC investigation that would merely duplicate other investigations already underway.

A. WorldCom's Accounting Irregularities Do Not Justify an FCC Investigation

The BOCs argue that WorldCom's accounting irregularities have "had enormous negative consequences not only for its own shareholders, employees, and customers, but also for the entire telecommunications sector."[18] They spend many pages repeating various accounts of the actions of former WorldCom employees and spinning various theories as to the consequences these have had for the industry. But as Verizon itself explained, "the financial difficulties and accounting irregularities presented by Enron, WorldCom and Global Crossing . . . are not something unique to the telecommunications industry. . . ."[19] The ramifications of the fraud of former WorldCom management is similar to the ramifications of such fraud in any publicly held company in any industry, and does not directly impact conduct over which the FCC has expertise and responsibility.

The BOCs' insistence that WorldCom's misstatements are responsible for the plight of the entire telecommunications industry is also vastly overstated. WorldCom does not mean to minimize the accounting irregularities that occurred. Indeed, WorldCom has acknowledged those irregularities and has taken concrete steps to address them. But the irregularities about which Verizon and SBC complain did not begin until 1999, after WorldCom had merged with

[18] Verizon Comments at 2.

[19] Verizon Accounting Comments at 8-9.

MCI and after the value of many telecommunications companies had already become significantly inflated. Indeed, Verizon's own consultant argues that WorldCom's financial misstatements were a symptom of the industry's financial problems, rather than their cause.[20]

The BOCs also claim that they have been left holding debts that might not be repaid, but even if true, that is the result of WorldCom's bankruptcy, not its accounting irregularities.[21] And to the extent that the BOCs claim they were induced to enter contracts with WorldCom by WorldCom misstatements, these allegations are unsubstantiated. Indeed, the question of how to treat debts based on fraud is one carefully balanced by Congress as part of the Bankruptcy Code, not one for the FCC to reconsider.[22]

The BOCs' desire to blame WorldCom for their own problems and those of the industry more generally is so strong that at times their arguments strain credulity. Thus they point to a statement attributed to a WorldCom employee that the demand on the Internet doubles every hundred days, and complain that they built unused capacity based on unthinking reliance on this statement.[23] That single statement obviously neither caused WorldCom's accounting fraud nor followed from it.

B. WorldCom's Prior Misconduct Did Not Relate To Its Carrier Activities

The BOCs attempt to turn WorldCom's accounting irregularities into FCC-related misconduct by arguing that WorldCom provided some of its financial data to the FCC, and that the FCC may have relied on those reports in issuing regulatory decisions. WorldCom

---

[20] *See* Robert W. Crandall, *Would a Debt-Free WorldCom Wreck the Telecom Industry?*, at 24 (Jan. 2003) (Exhibit C to Verizon Comments).

[21] *See* SBC Comments at 8.

[22] *See* 11 U.S.C. § 1141(d).

[23] *See* Verizon Comments at 20 n.68 (citing *The Power of WorldCom's Puff*, The Economist, July 20, 2002).

acknowledges, of course, that it routinely provides its 10-K reports to the FCC, and that it also provides financial data to the FCC in the course of proposed mergers. But to rely on errors in this data as the basis of FCC investigations would turn every financial misstatement into the basis of such an investigation. It would eviscerate the distinction between telecommunications-related misconduct and other misconduct.

For the Commission to begin § 403 investigations based on inaccuracies in 10-K reports would make it into a second SEC. After all, it is the SEC that mandates the creation of 10-K reports and polices misstatements on those reports. The reports are not uniquely relevant to telecommunications policy, but rather are means of providing financial data to the public. The SEC is fully capable of determining the importance of misstatements in the reports and assessing penalties based on such misstatements.

Verizon also points to WorldCom's acquisition of Intermedia Communications Inc. ("Intermedia") because WorldCom was required to report financial data during the course of the merger and verify that it complied with GAAP.[24] But this is simply another way of saying that WorldCom provided the Commission the same financial reports it provided generally. Such reports played no discernable role in the Intermedia merger, which was approved based on the Commission's conclusion that it would "result in no change in market concentration, with the

---

[24] *See* Verizon Comments at 15-16, 21-23. Verizon quotes a single sentence from WorldCom's advocacy in which it stated that its capital, sales force, and base of customers would be helpful to Digex. *See id.* at 23. That statement was a general one based on WorldCom's overall size and importance in the industry. It was true regardless of the inaccuracies in WorldCom's financial reports.

exception of web-hosting, where the increase would be minimal."[25] WorldCom's financial status was barely discussed in the Commission's evaluation.[26]

SBC tries to tie WorldCom's misstatements to regulatory consequences by listing proceedings, such as access charge proceedings, universal service proceedings, § 271 proceedings, and BOC requests for relief from interLATA restrictions for data services, that "surely" were influenced by such misstatements.[27] But SBC fails to support this conclusory allegation by referencing any inaccurate information WorldCom provided in these proceedings, much less explaining how such information influenced the proceedings.[28] Typical of these arguments is SBC's oft-repeated complaint about the merits of the public interest showing WorldCom has made (always unsuccessfully) in various § 271 applications. Whatever the merits of WorldCom's public interest arguments, they did not involve data derived from WorldCom's financial statements.

More offensive is SBC's assertion that "it is now clear" that much of the cost data in WorldCom's recent Triennial Review filing "was false."[29] It is SBC's statement, not WorldCom's filing, that is false. SBC does not point to any factual assertion in WorldCom's filing that it alleges is based on inaccurate financial data. And there is none. The suggestion that WorldCom continued to rely on fraudulent accounting data in FCC filings even after it

---

[25] *In re Intermedia Communications Inc., Transferor and WorldCom, Inc., Transferee for Consent to Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 21, 63, 90, 101*, 16 F.C.C.R. 1017, ¶ 7 (2001).

[26] Moreover, the suggestion that WorldCom has benefited unfairly – or benefited at all – from the Intermedia merger is not credible.

[27] SBC Comments at 14.

[28] *See id.* at 11-12, 14.

[29] *Id.* at 12.

uncovered the fraud is a serious charge. In Comments predicated on the importance of accurate statements to the Commission, one would expect SBC to be more careful.[30]

The sum of the matter is that Verizon and SBC fail to produce any evidence to support their claim that WorldCom's carrier filings (apart from attached SEC and related financial filings already under investigation by the SEC) contain falsehoods related in any way to WorldCom's accounting irregularities, and so fail to make out a case for an independent investigation by the FCC.

C. The FCC Has Never Initiated a § 403 Investigation on Facts Similar to These

As WorldCom discussed in its initial response, the Commission has limited its initiation of § 403 investigations to serious telecommunications violations.[31] Notwithstanding that the question before the Commission is whether to initiate a § 403 investigation, Verizon and SBC concentrate only on whether WorldCom's licenses should be revoked, and fail to cite any cases in which the Commission has initiated an investigation pursuant to § 403. Instead, the BOCs' cited cases all involve the initiation of show cause hearings pursuant to 47 U.S.C. §§ 309(e), 312(a) and 312(c).[32]

---

[30] SBC's desperation to find FCC-related misconduct with which to blame WorldCom is also apparent from its allusion to problems with MCI's divestiture of its Internet business to Cable & Wireless. *See id.* at 13. SBC cites the 1999 testimony of one Cable & Wireless executive, even though Cable & Wireless has not filed a complaint based on these alleged problems in the several years since this testimony. Moreover, contrary to SBC's intimations, that testimony criticized only the *implementation* of the divestiture, not problems with accounting or the terms of the divestiture. *See Mergers in the Communications Industry: Hearings Before the Subcomm. on Commerce, Science and Transp. of the Senate Comm. on Commerce*, 106th Cong. (Nov. 8, 1999) (Testimony of Mike McTighe, Chief Executive Officer, Cable & Wireless, Global Operations). Indeed, the divestiture took place in 1998, well before the filing of the financial reports SBC now urges the FCC to review.

[31] *See* WorldCom Comments at 17.

[32] *See* Verizon Comments at 11 n.29 (citing cases); SBC Comments at 15 n.47 (citing cases).

Moreover, in addition to their procedural inapplicability to the matter at issue, these cases are also factually inapposite. They involve broadcasters or mobile licensees who violated core Communications Act regulations and were not already being investigated by another governmental body. *In re Norcom Communications Corporation*[33] is illustrative. In *Norcom*, the Commission instituted a show cause hearing based on allegations that the licensee had unlawfully transferred control of the license and that the licensee was using its non-profit service frequencies for profit-making broadcasts.[34] It bears no relationship to the facts at issue here. The BOCs' cases show only that the Commission has never initiated a § 403 investigation on facts similar to those presented here.

D. <u>The FCC Has Never Revoked Licenses on Facts Similar to These</u>

SBC and Verizon state that the Commission routinely revokes licenses for FCC-related conduct similar to WorldCom's. But, once again, it is SBC and Verizon that are guilty of gross misrepresentation. The cases they cite do not remotely support their arguments.

---

[33] 13 F.C.C.R. 21493 (1998).

[34] The BOCs' other cited cases are similarly inapposite. *See In re James A. Kay, Jr.*, 10 F.C.C.R. 2062 (1994) (ordering hearing pursuant to 47 U.S.C. §§ 312(a) and 312(c) because land mobile licensee repeatedly failed to respond to the Commission's requests for information and had never constructed, or had deconstructed, several of the stations for which he was licensed, and had purposefully interfered with other radio systems); *In re Marc Sobel, Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Request of Certain Finder's Preferences*, 12 F.C.C.R. 3298(1997) (ordering hearing pursuant to 47 U.S.C. §§ 309(e), 312(a) and 312(c) to investigate possible unauthorized transfer of control); *In re MobileMedia*, 12 F.C.C.R. 14896 (1997) (ordering hearing pursuant to 47 U.S.C. §§ 309(e), 312(a) and 312(c) to investigate the filing of at least 289 FCC forms for paging systems that had not been constructed); *In re The Lutheran Church/Missouri Synod for Renewal Licenses*, 9 F.C.C.R. 914 (1994) (ordering hearing pursuant to 47 U.S.C. § 309(e) to investigate misrepresentation of recruiting efforts mandated by statute); *In re Leslie D. Brewer*, 16 F.C.C.R. 5671 (2001) (ordering hearing pursuant to 47 U.S.C. §312(a)(2), 312(a)(4) and 312(c) to investigate amateur radio licensee who was a serial pirate); *In re Peninsula Communications Inc.*, 16 F.C.C.R. 16124, ¶ 1 (2001) (finding licensee apparently liable for transgressions and noting only that "continued unauthorized operation may lead to an order to show cause to revoke [licensee's] other Commission licenses").

First, virtually all of the cases SBC and Verizon cite involve broadcasters, not common carriers. As WorldCom has previously explained, Congress imposed fitness requirements on broadcasters because the scarcity of broadcast spectrum requires some criteria to allocate licenses. That need does not exist for common carriers. Second, almost all of the cases involve repeated defiance by broadcasters of Commission orders directed to them individually, or repeated lies told by broadcasters to evade an investigation directed at them.[35] Third, the cases generally involve misconduct concerning the core regulatory responsibilities of the Commission – such as unlicensed broadcasts or billing practices, and not financial misconduct. Fourth, the cases involve misconduct that has not been investigated by any other agency. Finally, the cases involve bad actors that have not changed course. None involve companies that have taken serious steps to ensure that past wrongdoing will not be repeated, much less companies that have entered agreements with a federal agency, such as the SEC, that included monitoring to ensure that past misbehavior is not repeated.[36] WorldCom is decidedly different from these companies in all relevant respects.

---

[35] *See In re Leslie D. Brewer*, 16 F.C.C.R. 5671 (2001) (operation of unlicensed broadcast despite repeated warnings and sanctions); *In re Peninsula Communications, Inc.*, 16 F.C.C.R. 16124, ¶ 1 (2001) (licensee refused to cease operation of its translators despite FCC order); *In re CCN, Inc.*, 13 F.C.C.R. 13599 (1998) (repeated slamming of customers and evasion of service from the Commission); *In re Revocation of the License of Sea Island Broadcasting Corp. of South Carolina*, 60 F.C.C.2d 146 (1976) (misrepresentations to the Commission during Commission investigation of willful, fraudulent billing practices).

[36] Pursuant to the agreement entered by the SEC and WorldCom, WorldCom agreed to be permanently restrained and enjoined from violating any relevant federal securities laws. It also agreed: to share its internal report with the SEC in furtherance of the SEC's comprehensive review of the adequacy and effectiveness of WorldCom's corporate governance systems, policies, plans, and practices; to retain a qualified consultant to perform a review of the effectiveness of WorldCom's material internal accounting control structure and policies; and to provide training and education to certain of its officers and employees to minimize the possibility of future violations of the federal securities laws.

Notwithstanding, Verizon cites twenty-year old cases for the proposition that the Commission will revoke licenses based on inaccurate information provided to the Commission. These cases were decided before the Character Policy Qualifications came into effect, during an era in which the FCC regulated licensing with a much heavier hand than it does currently. They are also factually distinct. They involve deliberate attempts to mislead the Commission on matters of core concern to it, not merely repetition of financial statements created for other purposes for other agencies.[37]

Likewise, the BOCs' attempt to tie in the convictions of former WorldCom employees is untenable. Verizon cites two cases in which the Commission revoked licenses based on non-

---

[37] *In re Revocation of the Licenses of Pass Word, Inc.*, 76 F.C.C.2d 465, ¶ 3 (1980), *aff'd, Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982), involved knowing, deliberate and material misrepresentations by the president and owner of two companies to the Commission on matters of core concern to the Commission – whether the companies had constructed and began operation of several land mobile radio channels. The president/owner made the misrepresentations in an attempt to obtain licenses for additional frequency for Land Mobile Radio Services, and made further misrepresentations in an attempt to cover up the prior misrepresentations.

In re Applications of George E. Cameron Jr. Communications, 91 F.C.C.2d 870 (1982), involved a decision of how to allocate a single radio license among two applicants, not revocation of a license of a common carrier. The Commission revoked the license after finding, among other things, that the licensee ran the station with complete ineptitude, that the licensee had transferred control despite explicit notification not to do so, and that the licensee had obtained licenses in part *because of* financial representations that misled the Commission to believe it was capable of running a radio station.

Finally, Verizon cites *In re Applications of RKO General, Inc.*, 78 F.C.C.2d 1 (1980), *aff'd in part, rev'd in part RKO General, Inc. v. FCC*, 670 F.2d 215 (D.C. Cir. 1981), for the proposition that the Commission revoked RKO's broadcast licenses for filing inaccurate financial reports, *see* Verizon Comments at 12-13. But the D.C. Circuit reversed that part of the Commission's decision. The court explained that the FCC had not found that RKO deliberately and intentionally deceived the FCC or explored why RKO would do so on matters of minor significance to the Commission. *See RKO*, 670 F.2d at 225-26. The court did uphold revocation of an RKO broadcast license on the basis that RKO repeatedly and deliberately "stonewall[ed]" the Commission regarding a central question in proceedings for the renewal of RKO's licenses. *RKO*, 670 F.2d at 228-30. Although not a basis for punishing RKO, such stonewalling rendered RKO unfit to hold a broadcast license, as "a broadcast license provides an opportunity to use a limited and vital public resource." *RKO*, 78 F.C.C.2d 1, ¶1.

FCC conduct, *In re Contemporary Media, Inc.*[38] and *In re Applications of Williamsburg County Broadcasting Corp.*[39] Both concerned broadcast licensees in which the principal owner (and only owner with a voting interest) was convicted of a felony. In both cases, the owner retained significant control over the licensees even after his felony conviction. And in both cases, the licensees misled the FCC subsequent to the felony convictions. In effect, both companies themselves were convicted of felonies and made no effort to reform. These cases in no way support action against WorldCom where accounting irregularities resulted from the action of a few individuals, where the company itself has taken substantial steps to reform, including ridding the company of these individuals, and where actions by other agencies will ensure that the company is reformed. This would be so even if WorldCom were a broadcast licensee to whom the character standards directly apply.

III. The BOCs' Fear of Competition Is Not a Basis to Revoke WorldCom's Licenses

The central focus of the BOCs' complaint has nothing to do with financial disclosures at all, or FCC rulemaking, but is directed at the right to reorganization provided in the U.S. Bankruptcy Code. They argue that it would be unfair to allow WorldCom to emerge from bankruptcy debt free and to compete against them, "decry[ing] Chapter 11's strong bias toward the continuation of unprofitable businesses."[40]

This argument is squarely precluded by Section 525 of the Bankruptcy Code, which prohibits a governmental agency from revoking a license from a debtor, solely because the

---

[38] 13 F.C.C.R. 14437 (1998).

[39] 5 F.C.C.R. 3034 (1990).

[40] SBC Comments at 19 (quotation marks omitted); *see also* SBC Comments at 16-19; Verizon Comments at 9.

debtor has not paid a dischargeable debt or is a debtor in bankruptcy.[41] As the Commission well knows, in *FCC v. NextWave*,[42] the Supreme Court recently confirmed that § 525 means what it says, and prohibits the Commission from revoking a license based on non-payment or status as a debtor in bankruptcy, even if the Commission could assert a "valid regulatory purpose" for revocation.[43] Section 525 precludes the FCC from canceling the licenses based on the BOCs' argument that policy considerations should lead the FCC to conclude that it would be bad for the industry for WorldCom to reorganize under Chapter 11 of the Bankruptcy Code.

Nor is there anything to the substance of the Verizon/SBC argument. To the contrary, as was explained by Lawrence White at the Commission's October 7 en banc hearing, the emergence of companies from bankruptcy without debt likely will contribute to revival of the industry.[44] The BOCs' Mr. Crandall disagrees. He evidently believes both that the WorldCom that emerges from bankruptcy without debt will have a powerful competitive advantage over his clients that will unfairly damage their business, and at the same time that the reorganized company will remain unprofitable and will not long survive. But the Commission need not commit resources evaluating arguments coming out of both sides of Mr. Crandall's mouth. WorldCom has a statutory right to reorganize, whether Verizon approves or not, and it is up to

---

[41] *See* 11 U.S.C. § 525(a).

[42] *FCC v. NextWave Personal Communications, Inc.*, No. 01-653, 2003 U.S. Lexis 1059 (U.S. Jan. 23, 2003).

[43] *Id.* at *16.

[44] *See* Lawrence J. White, *Dealing with the Telecommunications Industry's Difficulties*, Presentation at the Federal Communications en banc hearing, Oct. 7, 2002 (available at http://ftp.fcc.gov/enbanc/100702/white_presentation.pdf); *see also* Lawrence J. White, *In Praise of Bankruptcy*, Wall St. J., Jan. 21, 2003, at B2 ("[M]ore often than not, the market is well served by the [bankruptcy] process. The sooner the losses are recognized and absorbed, the faster companies and markets can recognize the marginal costs of using the bankrupt enterprise's resources for worthwhile services. All of which will encourage lower prices, expanded demand and greater economic efficiency. The U.S. economy will be the beneficiary.").

WorldCom's creditors, and ultimately up to the market itself, to evaluate WorldCom's business prospects.

In the end, SBC's and Verizon's pleadings are part of their unrelenting effort to eliminate competition in telecommunications markets. They may even believe their own advocacy that their individual corporate interest in securing monopoly profits perfectly coincides with the public interest. But Congress made a different judgment. The 1996 Act committed the FCC to promote competition in all telecommunications markets. While there have been good faith disagreements about how best to accomplish that mandate, those arguments have no place in this proceeding. Revoking the licenses of one of the few substantial remaining competitors to the BOCs would harm efforts to open and preserve competition in local, long distance and Internet markets. Such a result would serve no interest but that of the BOCs.

IV. Conclusion

Verizon and SBC have made a responsive pleading that violates the Commission's pleading rules. Their request for relief also is a flagrant violation of the automatic stay provision of the Bankruptcy Code. The policy grounds upon which they ask the FCC to rest would have the Commission commit an equally flagrant violation of § 525 of the Bankruptcy Code, and the legal grounds upon which they base their assertion entirely lack merit. Finally, all of this inappropriate and unlawful behavior is part of a barely-concealed effort to use the FCC to eliminate competition in the telecommunications industry, directly in the teeth of the commands of the 1996 Act. The FCC should reject these ill-advised BOC submissions and the relief they request.

Respectfully submitted,

Mark D. Schneider
Marc A. Goldman
Nicole G. Berner
Amy L. Tenney
JENNER & BLOCK, LLC
601 Thirteenth St., NW
Washington, DC 20005
(202) 639-6005
(202) 639-6066 (fax)

Richard S. Whitt
WORLDCOM, INC.
1133 19th Street, NW
Washington, DC 20036
(202) 887-3845

February 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February, 2003, a copy of the foregoing was delivered via first class mail, postage prepaid to:

Gregg P. Skall, Esq.
Howard J. Barr, Esq.
WOMBLE CARLYLE SANDRIDGE & RICE
1401 Eye Street, NW
7th Floor
Washington, DC 20005
Counsel for UCC

Michael K. Kellogg, Esq.
Peter W. Huber, Esq.
Evan T. Leo, Esq.
KELLOGG, HUBER, HANSEN,
TODD & EVANS, P.L.L.C.
1615 M Street, NW
Suite 400
Washington, DC 20036
Counsel for SBC Communications Inc.

Andrew G. McBride, Esq.
Robert L. Pettit, Esq.
John F. Papandrea, Esq.
Heather O. Dixon, Esq.
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Verizon

Sharon J. Devine, Esq.
1020 19th Street, NW
Suite 700
Washington, DC 20036
Counsel for Qwest Communications International Inc.

ESSENTIAL INFORMATION
P.O. Box 19405
Washington, DC 20036

Wesley M. "Pat" Pattillo
NATIONAL COUNCIL OF CHURCHES
475 Riverside Drive
Suite 880
New York, NY 10115

George Kohl, Esq.
COMMUNIATIONS WORKERS OF AMERICA
501 Third Street NW
Washington, DC 20001

Richard Burr
CONGRESS OF THE U.S. HOUSE OF REPRESENTATIVES
1526 Longworth House Office Building
Washington, DC 20515

Harry C. Alford
NATIONAL BLACK CHAMBER OF COMMERCE
1350 Connecticut Avenue, NW
Suite 825
Washington, DC 20036

Milton J. Little, Jr., Esq.
Executive Vice President & COO
NATIONAL URBAN LEAGUE
120 Wall Street
New York, NY 10005

Cleo Fields, Esq.
RAINBOW/PUSH COALITION
1131 8th Street, NW
Washington, DC 20002

Norina Moy, Esq.
Richard Juhnke, Esq.
SPRINT CORPORATION
401 9th Street, NW
Suite 400
Washington, DC 20004

Amy L. Tenney